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9	BEFORE THE BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA			
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12	In the Matter of the Accusation Against: Case No. 2009-315			
13	DENA DANIELL BARKER, RN 1455 South State Street, Space 80 ACCUSATION			
14	Hemet, CA 92543			
15	Registered Nurse License No. 662012			
16	Respondent.			
17				
18	Complainant alleges:			
19	<u>PARTIES</u>			
20	1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation			
21	solely in her official capacity as the Executive Officer of the Board of Registered Nursing,			
22	Department of Consumer Affairs.			
23	2. On or about July 28, 2005, the Board of Registered Nursing (Board) issued			
24	Registered Nurse License Number 662012 to Dena Daniell Barker, RN (Respondent). The			
25	Registered Nurse License was in full force and effect at all times relevant to the charges brought			
26	herein, and will expire on February 28, 2009, unless renewed.			
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		<u>JURISDICTION</u>
	3.	This Accusation is brought before the Board of Registered Nursing,
Department o	f Consu	imer Affairs, under the authority of the following laws. All section
references are	to the	Business and Professions Code (Code) unless otherwise indicated.
	4.	Section 2750 of the Code provides, in pertinent part, that the Board may
discipline any	license	ee, including a licensee holding a temporary or an inactive license, for any
reason provid	led in A	rticle 3 (commencing with section 2750) of the Nursing Practice Act.
	5.	Section 2761 of the Code states:
	The b	oard may take disciplinary action against a certified or licensed nurse or
deny an appli	cation f	for a certificate or license for any of the following:
	(a) U	nprofessional conduct, which includes, but is not limited to, the
follow	ving:	
assisti or terr to it.	ng in o	riolating or attempting to violate, directly or indirectly, or rabetting the violating of, or conspiring to violate any provision s chapter [the Nursing Practice Act] or regulations adopted pursuant

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

Section 2762 of the Code states: 6.

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

7. Section 2764 states:

The lapsing or suspension of a license by operation of law or by order or decision of the board or a court of law, or the voluntary suspension of a license by a licentiate shall not deprive the board of jurisdiction to proceed with any investigation of or disciplinary proceeding against such license, or to render a decision suspending or revoking such license.

8. Section 2811, subdivision (b), provides in pertinent part, that each license not renewed in accordance with that section shall expire, but may within a period of eight years thereafter be reinstated.

9. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

10. Section 490 of the Code states:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

11. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

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1	12. California Code of Regulations, title 16, section 1444, states:
2	A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.
4	13. California Code of Regulations, title 16, section 1445, states:
5	••••
6	(b) When considering the suspension or revocation of a license on the
7 8	grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:
9	(1) Nature and severity of the act(s) or offense(s).
10	(2) Total criminal record.
11	(3) The time that has elapsed since commission of the act(s) or offense(s).
12	(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
13	
14	(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
15	(6) Evidence, if any, of rehabilitation submitted by the licensee.
16	COST RECOVERY
17	14. Section 125.3 of the Code provides, in pertinent part, that the Board may
18	request the administrative law judge to direct a licentiate found to have committed a violation or
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	violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
20	violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.
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FIRST CAUSE FOR DISCIPLINE

(February 20, 2008 - Driving Under the Influence of Alcohol With B.A.C. of 0.08% or Higher on November 16, 2007)

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15. Respondent is subject to disciplinary action under sections 2761(f) and 490, in conjunction with California Code of Regulations, title 16, section 1444, in that Respondent was convicted of a crime which is substantially related to the qualifications, functions, or duties of a licensed registered nurse, in that on or about February 20, 2008, Respondent was convicted by the court on her plea of guilty, of violating Vehicle Code section 23152(b), (Driving Under the Influence of Alcohol With B.A.C. of 0.08% or Higher), a misdemeanor. The circumstances are as follows:

- a. On November 16, 2007, Hemet Police Department officers were dispatched to a possible drunk driver collision at a mobile home park. Upon arrival, officers made contact with the assistant manager of the mobile home park who told officers Respondent had been drinking and ran over a large rock and mailbox. The manager directed officers to Respondent's unit. Upon making contact with Respondent inside Respondent's unit, officers observed that she was unable to stand on her own and had to hold her arm as she was led to the porch of her unit. Officers asked Respondent if she was okay, and Respondent replied that she just wanted to get her kids back. Officers could smell a very strong odor of an alcoholic beverage coming from her breath and person. Respondent's speech was slurred and at times incoherent. Respondent was asked how much she had to drink that day and Respondent replied that she had "two strong drinkies." Officers conducted a series of Field Sobriety Tests. Using a Preliminary Alcohol Device, Respondent blew a .288%. Respondent was placed under arrest.
- b. As a result of the above conviction, Respondent was placed on three (3) years summary probation, ordered to pay \$1,753 in fines, attend a first offender DUI program for nine (9) months, submit to chemical test of blood saliva, breath or urine for any law enforcement officer, and not drive within six hours of consuming alcohol.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Use of Alcohol to Extent Dangerous to Self or Others)

Respondent is subject to disciplinary action under section 2761(a), on the 16. grounds of unprofessional conduct as defined in Code section 2762(b), in that she used alcoholic beverages to an extent or in a manner dangerous or injurious to herself, any other person, or the public, or to the extent that such use impaired her ability to conduct with safety to the public the practice authorized by her license, as set forth in paragraph 15, above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 1. Revoking or suspending Registered Nurse License Number 662012, issued to Dena Daniell Barker, R.N.
- Ordering Dena Daniell Barker, R.N. to pay the Board of Registered 2. Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
 - Taking such other and further action as deemed necessary and proper.

DATED: 615109

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Executive Officer

Board of Registered Nursing Department of Consumer Affairs

State of California

Complainant